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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re CC's Bakeries, Inc.

Serial No. 78247154

Thomas E. Anderson and Mark D. Schneider of Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C. for CC's Bakeries, Inc.

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Before Seeherman, Walters and Kuhlke, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

CC's Bakeries, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register CC'S BAKERIES in standard character form, with the word "bakeries" disclaimed, for "bakery goods."¹ Registration has been refused pursuant to Section 2(d) of the Trademark

¹ Application Serial No. 78247154, filed May 8, 2003, and asserting a bona fide intention to use the mark in commerce.

Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if used on its identified goods, so resembles marks previously registered by two different entities that it is likely to cause confusion or mistake or to deceive. The cited registrations are No. 1627442 for C&C BAKERY in standard character form (with "bakery" disclaimed) for "bakery products," owned by Bimbo Bakeries USA, Inc.,² and the following six registrations owned by Community Coffee Company, L.L.C.:³

CC'S for coffee⁴ and for "retail store services in the field of coffee and tea";⁵

CC'S COFFEE HOUSE, with "coffee house" disclaimed, for "retail store services in the field of coffee and tea";⁶

CCSCOFFEE.COM for "retail store services in the field of coffee; computerized on-line retail services in the field of coffee";⁷

² Issued December 11, 1990; Section 8 & 15 affidavits accepted and acknowledged; renewed.

³ A seventh registration owned by this company was originally cited by the Examining Attorney, but the refusal based on this registration was withdrawn because the registration was cancelled for failure to file a Section 8 affidavit of use.

⁴ Registration No. 2524694, issued January 1, 2002.

⁵ Registration No. 2524699, issued January 1, 2002.

⁶ Registration No. 2527170, issued January 8, 2002.

⁷ Registration No. 2527169, issued January 8, 2002. The copy of the registration that the Examining Attorney attached to the first Office action shows the mark as lower case letters, "ccscoffee.com," but Office records indicate that the mark is registered as a "typed drawing." In either case, the depiction would not affect our decision herein.



with "coffee" disclaimed, for
"coffee";⁸ and



with "coffee house" disclaimed, for
"retail store services in the field of
coffee and tea."⁹

The appeal has been fully briefed. Applicant did not request an oral hearing.

We turn first to a consideration of the refusal based on the Bimbo Bakeries USA, Inc. registration. Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003).

⁸ Registration No. 2533901, issued January 29, 2002.

⁹ Registration No. 2577695, issued June 11, 2002.

The registration owned by Bimbo Bakeries USA, Inc. is for C&C BAKERY for "bakery products." Applicant's mark is CC'S BAKERIES for "bakery goods." The goods are thus legally identical, and this du Pont factor favors a finding of likelihood of confusion. So, too, does the factor of the similarity of trade channels, since we must assume that the goods, being identical, are sold through identical channels of trade to the same classes of customers.

The marks are very similar in appearance, pronunciation and commercial impression. The second word in both is the word BAKERY/BAKERIES, which is essentially the same term, differing only in that one is in singular form, and the other plural. The initial terms are also highly similar, with both containing the initials CC. We recognize that in applicant's mark the term is possessive, perhaps suggesting a bakery owned by someone with the initials CC, while the mark in the cited registration, containing C&C, suggests a bakery owned by two people having the initial "C." However, under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must rely upon their imperfect recollections. *Dassler KG v. Roller Derby Skate Corporation*, 206 USPQ 255 (TTAB 1980). Thus, consumers are not likely to note or remember the

differences between the marks. This is particularly true because the marks are used on bakery products which, by their very nature, are inexpensive items which are subject to impulse purchasing. As a result, the similarities in the appearance, pronunciation and commercial impressions of the marks outweigh any differences in their connotations. In this connection, we note that when marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Therefore, the factor of the similarity of the marks favors a finding of likelihood of confusion. So, too, does the factor of the conditions under which the goods are sold and the buyers to whom sales are made. Bakery products are bought by the public at large, by consumers of virtually all ages and education levels. These consumers cannot be considered to be discriminating or sophisticated purchasers. Further, as indicated above, bakery products are often purchased on impulse, without care.

Applicant argues that the factor of the number and nature of similar marks in use on similar goods favors a finding that confusion is not likely. In support of this

position, applicant has submitted evidence of marks and trade names containing the letters "CC" that were retrieved from a search of the Patent and Trademark Office database, telephone directories and the Internet.

With respect to the Patent and Trademark Office records, applicant has provided a listing of applications and registrations for marks that include or consist of the letters "CC." The list has no probative value, in that there is no indication of the goods or services for which the marks are applied and/or registered. We also note that in many of the marks on this list the letters "CC" do not stand out, but are part of a larger phrase, e.g., E.M.C.C. (Registration No. 2233632), C C P CAPPED CRYSTAL PACKAGING (Registration No. 2231695) and SWATCH A C C E S S (Registration No. 2248707). Applicant has also submitted copies of ten registrations and/or applications that are for food products or for restaurant services. The applications, some of which have been abandoned, have evidentiary value only to the extent that they show the applications were filed. One of the registrations has expired. The existing registrations are for C.C.M. COFFEE for coffee; C.C. BROWN'S for dessert sauces and toppings and ice cream sauces and toppings; C.C. WINKLE for caramel

popcorn and cashews covered in fudge; and C&C for ginger-ale.

Third-party registrations are not evidence of use of those marks in the marketplace, and they do not show that the public is familiar with those marks. See *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1545 (Fed. Cir. 1992); and *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268 (CCPA 1973). While third-party registrations may be looked to in the same manner as a dictionary to determine a term's significance in a particular trade, it is not seen how the registrations of marks containing the letters C.C. or C&C shed any light on this significance. The number of third-party registrations presented here is too limited, and the uses of "C" in the marks are too different, for us to draw any conclusion about the significance of the letters C. Nor can we conclude that C&C BAKERY is a weak mark on the basis of these few third-party registrations for food-related goods and services.

The telephone directory listings come from the website "yellowpages.com." Many of the businesses, based on their names, appear to be far-removed from the food industry, e.g., CC'S DISCOUNT AUTO MART, CC'S ELECTRICAL CONTRACTING, CC & A INCOME TAX & IMMIGRATION SERVICES, CC & BW RAILROAD

MUSEUM. However, there are some businesses that, from their names, appear to sell food products or offer food-related services.¹⁰ They are CC'S FINEST CANDIES in Cambridge City, IN; CC'S ICE CREAM PARLOR in Roseburg, OR; CC'S LIQUORS in Pawtucket, RI; CC'S PIZZA in both Wilkinson, IN and Greybull, WY; CC & C Q T PIE SHOP in Pittsburgh, PA; CC & G PECANS GRVN COUNTY in Wynnewood, OK; CC & L DISCOUNT GROCERY in Dallas, GA; CC & XT RESTAURANT in Rockford, IL; CC BEVERAGE in Brunswick, GA; CC BLAIR MINI MALL & RESTAURANT in McCormick, SC; CC CAFE in Lake Worth, FL; CC CARRYOUT in Baltimore, MD; CC CONVENIENCE STORE in Steedman, MO; CC EXPRESS GOURMET COOKIES in Houston, TX; CC FARM in Fayetteville, TX; CC FH in Knoxville, TN; CC FOOD MART in Highland, IL, Birmingham, AL and Carlyle, IL; CC FOOD MARTS in Edwardsville, IL and Breese, IL; CC FOODMART in Trenton, IL;¹¹ CC NIGHTCLUB in Raleigh, NC; CC SUB SHOP & DELI in Carson City, NV; CC

¹⁰ There are some listings that do not indicate what the business might be, e.g., CC & A LTD, CC & COMPANY and CC MIDWEST. There is also a listing for CC & R KITCHENS; we cannot determine from this name whether this company sells items such as kitchen cabinets or offers remodeling services, or whether it renders food preparation services.

¹¹ There is also a listing at the same address for CC FOODMAN; we assume that this is a typographical error.

TAQUERIA in Jamestown, CA; and CC TAVERN in West College Corner, IN.¹²

Applicant has also submitted materials from various Internet websites that indicate trade name use of "CC." Again, many of these listings are not in the food industry, e.g., CC's Custom Leatherworks for hand-crafted Bible covers, CC's Boutique for a bridal salon and CC's Buttons. However, the pages do indicate that there may be four restaurants with marks containing the element "CC'S," namely, CC's Burgers in Seattle (according to a restaurant review dated February 27, 2004 on the "Seattle Post-Intelligencer" website); Cc's Café in Sharpsburg, PA and CC's Pizza in Wilkinson, IN, both of which are rated at <http://chefmoz.org>; and Cc's Paisano Pizzeria in Cuba, NM, which was retrieved by a search on the chowbaby.com website.

Applicant's search of telephone directories and the Internet remind us of a statement made by the Court of

¹² Applicant has also submitted some telephone directory listings for businesses having "CCS" in their names. It appears to us that these trade names would be regarded as the three letters C-C-S, rather than as CC'S. Of these listings, eleven appear to be for businesses in the food industry, i.e., CCS BRASSERIE in Long Beach, CA; CCS CANDY COMPANY in Colcott, CT; CCS CATERING in Nashville, TN; CCS DELI in Carthage, TX; CCS DELI & GROCERY in Grand Bay, AL; CCS ESPRESSO in Tahoe City, CA; CCS ESPRESSO STOP in Chehalis, WA; CCS FAMILY CAFE in Glendive, MT; CCS HOMESTYLE CAFE in Nicholasville, KY; CCS HOT WINGS in Temple, GA; CCS SNACK SHOP in Camden, SC.

Appeals for the Federal Circuit in another context: "It is indeed remarkable to see the thoroughness with which NEXIS can regurgitate a placename casually mentioned in the news." In re Societe Generale des Eaux Minerales de Vittel S.A., 824 F.2d 957, 3 USPQ2d 1450, 1451 (Fed. Cir. 1987). In the same manner, the results from the search of yellowpages.com, which appears to have retrieved all places called CC or CC's in the entire country, no matter how small the town or the company, demonstrate how thorough the yellowpages.com database is.

Despite the thoroughness of these searches, we cannot conclude that there is such significant third-party use of CC marks or trade names that consumers are likely to make a distinction between C&C BAKERY and CC'S BAKERIES when these marks are used for identical goods. That is, the 20-some entities using the letters "CC" in their names, most of which appear to be of a local nature, are not sufficient for us to find that consumers are likely to distinguish among the various CC marks by their other elements, and certainly not to distinguish between C&C BAKERY and CC'S BAKERIES because one mark contains an ampersand and one contains an apostrophe, particularly when both have the virtually identical second element BAKERY/BAKERIES.

Compare, In re Broadway Chicken Inc., 38 USPQ2d 1559 (TTAB

1996), in which no likelihood of confusion was found between BROADWAY CHICKEN for restaurant services and BROADWAY PIZZA for restaurant services (as well as BROADWAY BAR & PIZZA for restaurant and bar services), largely because of third-party use evidenced by more than 500 "BROADWAY" entities in the Dun & Bradstreet database identified as a restaurant, bar or related services, as well as 80 listings in white/yellow pages for restaurant services and closely related goods and services and 575 entities in the American Business Directory indicating that they offered restaurant services and/or related goods and services.

Moreover, even if we were to find that the du Pont factor of the "the number and nature of similar marks in use on similar goods" favors a finding of no likelihood of confusion, this factor is far outweighed by the factors of the similarity of the marks, the identity of the goods, and the fact that the goods may be purchased by unsophisticated purchasers who do not exercise care in making the purchasing decision. Even if we were to find that C&C BAKERY is a weak mark, the scope of protection to which it is entitled would still extend to prevent the registration of CC'S BAKERIES for identical bakery products.

Accordingly, we find that applicant's mark, if used on bakery goods, is likely to cause confusion with C&C BAKERY for bakery products, and we affirm the refusal of registration on this ground.

This brings us to the refusal based on Community Coffee Company L.L.C.'s registrations. Turning first to the registrations of CC'S for coffee and for retail store services in the field of coffee and tea, we find that the marks are virtually identical. Applicant's mark merely adds the generic term BAKERIES to the cited mark. Because this generic term has no source-identifying significance for bakery products, the dominant part of applicant's mark is identical to the cited mark, and the marks, when viewed in their entirety, are nearly identical in appearance, pronunciation, connotation and commercial impression. Consumers who are familiar with the cited mark for coffee and retail store services in the field of coffee and tea are likely to believe, if they encounter bakery goods bearing the mark CC'S BAKERIES, that the registrant is using a variant of its CC'S mark to identify its bakery products. That is, they will regard the additional term BAKERIES in applicant's mark as indicating the nature of the goods, rather than as indicating that the sources of the goods and services are different. The factor of the

similarity of the marks thus favors a finding of likelihood of confusion.

With respect to the goods and services, there are obviously differences between applicant's products, bakery goods, and coffee and "retail store services in the field of coffee and tea." However, "it is not necessary that the goods [and/or services] of the parties be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods [and/or services] of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods [and/or services] are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer." In re International Telephone & Telegraph Corp. 197 USPQ 910, 911 (TTAB 1978).

In this case, the Examining Attorney has demonstrated the relatedness of applicant's and the registrant's identified goods and services by submitting a number of registrations showing that marks have been registered by a single entity for, in some cases, baked goods and coffee, and in other cases, baked goods and retail stores featuring

coffee and/or restaurants and cafes.¹³ Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). Thus, the factor of the similarity of the goods and services favors a finding of likelihood of confusion.

As we previously discussed, the purchasers of bakery items are the public at large, and such goods are purchased on impulse and without exercising a great deal of care. The purchasers of coffee and retail coffee store services are also the general public, and these goods and services, too, are often purchased without deliberation. Therefore, consumers are not likely to undertake an extended analysis

¹³ These registrations include No 2103238 for, inter alia, bakery products and coffee; No. 2109194 for ground and bean coffee and bakery goods; No. 2152133 for, inter alia, bread, pastries, cookies and coffee; No. 2376053 for bakery goods and coffee; No. 2331571 for, inter alia, bakery goods and coffee; No. 2352788 for coffee and bakery goods; No. 2298509 for, inter alia, coffee and bakery goods and retail store services featuring coffee and bakery goods; No. 2721575 for, inter alia, bakery goods, coffee, coffee bar services; No. 2677112 for, inter alia, pasties, cakes, cookies, breads and other bakery products, coffee shops, restaurants and snack bars; No. 1632485 for, inter alia, baked goods and restaurant and bakery services; No. 2318460 for, inter alia, bakery goods and coffee for consumption on or off the premises and restaurant services; No. 2331571 for, inter alia, bakery goods, coffee, restaurant services and cafes; and No. 2445158 for, inter alia, coffee, bakery goods and carry-out restaurants and cafes.

of applicant's and the registrant's marks in terms of the significance of the presence or absence of generic terms in them; rather, they are likely to simply assume that these marks, which are identical in their source-identifying element, CC'S, identify goods and services emanating from a single source.

We have considered applicant's arguments regarding third-party use of CC marks, but as we stated previously, the limited number of such uses is not sufficient for us to find that consumers would look to the generic term BAKERIES to distinguish between CC'S BAKERIES and CC'S.

Thus, we find that applicant's mark, if used on bakery goods, is likely to cause confusion with CC'S for coffee and for "retail store services in the field of coffee and tea." The refusals of registration based on Registration Nos. 2524694 and 2524699 are affirmed.

Many of the above comments also apply to our consideration of the likelihood of confusion between applicant's mark and the marks CC'S COFFEE HOUSE and CC'S COFFEE HOUSE and design, registered for "retail store services in the field of coffee and tea" and CC'S COFFEE and design, registered for coffee. We have already discussed how the applicant's identified goods and the registrant's identified goods and services are related.

With respect to the marks, the dominant element in each of registrant's marks is clearly CC'S. In CC'S COFFEE HOUSE, it is the only source-identifying element, with COFFEE HOUSE being a generic term for "retail store services in the field of coffee and tea." In the two design marks, CC'S is visually the most prominent part, the only other literal elements being the generic words COFFEE in CC'S COFFEE and Design, and COFFEE HOUSE in CC'S COFFEE HOUSE and Design. The design element in each mark is in the nature of a carrier or background for the letters and words and as such is not likely to be noted or remembered. See *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553 (TTAB 1987) (if a mark comprises both a word and a design, the word is normally accorded greater weight because it would be used by purchasers to request the goods or services).

Although we recognize that applicant's mark contains the generic term BAKERIES and the cited marks contain the generic terms COFFEE or COFFEE HOUSE, the presence of these generic terms in the respective marks does not serve to distinguish them. On the contrary, consumers who are aware of the registrant's use of CC'S COFFEE and Design for coffee, and CC'S COFFEE HOUSE and CC'S COFFEE HOUSE and Design for retail store services in the field of coffee and tea, i.e., a coffee house, are likely to believe, upon

seeing CC'S BAKERIES for bakery goods, that registrant has simply continued its pattern of using trademarks that combine CC'S with the generic term for the particular goods or services, and has adopted CC'S BAKERIES as the mark for its bakery goods. As we have already stated, the number of third-party uses of CC'S in the food area is so small, especially compared to the record in the Broadway Chicken case, that we cannot conclude that consumers would distinguish between applicant's CC'S BAKERIES mark and the registrant's CC'S COFFEE HOUSE, CC'S COFFEE and Design and CC'S COFFEE HOUSE and Design marks on the basis of the different generic terms in the respective marks.

Accordingly, we find that applicant's mark, if used on its identified goods, is likely to cause confusion with the cited registrations for CC'S COFFEE HOUSE, CC'S COFFEE and Design and CC'S COFFEE HOUSE and Design.

However, we reach a different conclusion when we consider the registration for CCSCOFFEE.COM. As used in the mark, CCS has the connotation of three separate letters, C-C-S, rather than that of the possessive form of the nickname CC. This difference, when coupled with the differences in the goods and services, is sufficient for us to conclude that confusion is not likely between applicant's mark and this cited registration. Accordingly,

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the refusal of registration based on this registration is reversed.

Decision: The refusal of registration based on Registration No. 2527169 is reversed. The refusals of registration based on Registration No. 1627442 for C&C BAKERY; Nos. 2524694 and 2524699 for CC'S; No. 2527170 for CC'S COFFEE HOUSE; No. 2577695 for CC'S COFFEE HOUSE and Design; and No. 2533901 for CC'S COFFEE and Design are affirmed.